



Distributed Network Software, LLC

"Developing Software, Delivering Service"

3250 West Lake Road, Erie, Pennsylvania, 16505

TERMS AND CONDITIONS OF SERVICE

1. **Contract Formation.** Now therefore, in consideration of the mutual promises and intending to be legally bound, the Buyer hereto, hereby agrees to the following:
 - 1.1. **Offer.** DNS' proposal form and/or DNS' proforma invoice quote (collectively, the "Estimate") constitutes an offer for the sale of services (the "Service") and includes all the terms and conditions contained herein (the "Terms and Conditions").
 - 1.2. **Acceptance.** Any purchase order or other form of acceptance issued by the Buyer in response to an Estimate from DNS shall result in a contract for the purchase of the Services at the price quoted in DNS' Estimate and shall be subject to these Terms and Conditions. DNS does not accept any terms contained in any purchase order or other documents issued by Buyer which are different from, conflict with, modify and/or add to these Terms and Conditions. DNS' execution of any document issued by the Buyer shall constitute only an acknowledgement of receipt thereof, and shall not be construed as an acceptance of any of the terms therein. Unless Buyer shall have set forth each specific objection to these Terms and Conditions in a separate writing signed and dated by Buyer and delivered to DNS contemporaneously with Buyer's purchase order or other acceptance document, Buyer shall be deemed to have accepted all of these Terms and Conditions. Buyer's issuance of a purchase order or other document which purports to reject some or all of these Terms and Conditions by virtue of Buyer's standard form language, or otherwise, shall not be sufficient objection. Where Buyer specifically objects to any of these Terms and Conditions, no contract shall be formed unless and until DNS agrees to accept in writing Buyer's proposed modifications to these Terms and Conditions.
 - 1.3. **Entire Agreement.** The Estimate and these Terms and Conditions shall constitute the entire understanding and agreement (the "Contract") between Buyer and DNS. Any representation, promise, course of dealing, course of performance, custom or trade usage will not be binding upon either party. This Contract supersedes prior agreements and understandings between the parties with respect to the subject hereof. Any oral agreement or representation shall bind neither Buyer nor DNS. Additional agreements and documents between the parties such as proposals or estimates from DNS, written acceptances by the Buyer, or purchase orders may be attached as an addendum to this Contract. The Buyer represents to have read this Contract and is in agreement with all of the terms and conditions herein. This Contract may only be modified by a written instrument executed by both parties.
2. **Purchase and Sale.** Subject to these Terms and Conditions, Buyer agrees that the scope of work conducted by DNS is considered to be time and material services including: 1.) support of Buyer's technology infrastructure, 2.) software development, 3.) software implementation, 4.) data and/or database creation and/or manipulation, 5.) technology consultation services. Services are provided at a rate declared in the Estimate. Buyer acknowledges that services are billed on a 'per man hour' basis.
 - 2.1. **Progress Reporting.** DNS will inform Buyer of work progress through a project tracking website. Progress reports may be submitted to Buyer and, will be available from a project tracking website located at <http://blueprint.dnslc.com>. Buyer agrees to use the project tracking website to obtain progress reports or accept hard copy progress reports attached to DNS invoice. All credentials given to Buyer that are used to access the secure project tracking and management site, including user names and passwords, belong to DNS. Buyer is not permitted to transfer credentials to anyone without the written consent of DNS or its agents. Login credentials may be revoked by DNS at any time without consequences.
3. **Taxes.** Buyer shall be responsible for all applicable taxes, and shall pay any taxes and/or fees (sales, usage, etc.). Buyer shall defend, indemnify and hold DNS harmless from any claim, loss, damage, liability or expense incurred with regard to the payment of any such taxes or duties.
4. **Payment; Security Interest.** Buyer shall pay the purchase price, all applicable taxes and/or fees, and all other applicable charges in full, in U.S. Dollars, without any deduction for claims, set-offs or recoupment on account of this Contract or any other matter between the parties within the time periods set forth below in Section 4.2, below. Payment shall not be contingent upon completeness, feature functionality, installation or upon tests. If payment is delayed beyond the date on which it is due, interest shall accrue and be payable by Buyer on the unpaid balance at a rate of one and three-quarter percent (1 3/4%) per month.
 - 4.1. **Invoices.** Service invoices shall contain date of service and number of hours expended to the nearest half hour. Invoices will match weekly progress report hours as described in Section 2.1 and may be accompanied by a hard copy progress report. DNS shall be entitled to reimbursement of reasonable travel expenses and necessary lodging expenses or similar costs related to this engagement that are pre-approved by Buyer. Such costs shall be included in an invoice and be supported by written documentation such as receipts.
 - 4.2. **Payment.** Unless otherwise specified by DNS in the Estimate, the Buyer shall pay the total invoice within five (5) days from the date of the invoice date for Services.
 - 4.3. **Security Interest.** Buyer hereby grants to DNS a security interest in the Services, until all monies due DNS under this Contract are paid in full. DNS shall have the right to file financing statements and any other documents that may be necessary to evidence and perfect such a security interest in the Services in any jurisdiction.
5. **Buyer Disclosures.** Unless otherwise agreed to in writing by DNS, any information or ideas transmitted by Buyer to DNS in connection with this Contract shall not be regarded as a trade secret of, or submitted in confidence by, the Buyer.
6. **Credit Verification.** DNS reserves the right to perform a review of Buyer's creditworthiness following acceptance of DNS' Estimate by Buyer. Notwithstanding any other provision of this Contract, DNS shall not be obligated to perform the Contract if Buyer's creditworthiness is unsatisfactory to DNS, in DNS' sole discretion. In such case, DNS shall not be obliged to proceed with the performance of this Contract, and DNS may cancel this Contract at any time without any liability to Buyer, unless and until the Buyer shall have agreed to such terms of payment and such security therefor as is satisfactory to DNS, at DNS' sole discretion.
7. **Work Product.** In consideration for full payment of all invoices; drawings, source code, programs, work product, designs, specifications, reports, and data arising out of development services performed under this Engagement, shall be the property of Buyer and its agents. Buyer

acknowledges and agrees that Services performed for Buyer does not preclude DNS from performing the same or like Services for other customers of DNS.

8. **No License or Sale of Intellectual Property.** The sale of the Services does not grant to, convey to or confer upon Buyer a license or any other rights, express or implied, under any patent, copyright or other intellectual property right of DNS encompassed within, covering or relating to the Services.
9. **Exclusion of Certain Damages.** In no event shall DNS or DNS' employees, officers, directors, representatives, affiliates and/or agents be liable for consequential, incidental or punitive damages incurred by Buyer or any third party in connection with any matter arising out of or relating to this Contract, or the breach thereof, regardless of whether such damages are characterized as arising out of breach of warranty, tort, contract, strict liability, statutory liability, indemnity or otherwise. Such limitations shall apply regardless of whether DNS has been advised or otherwise made aware of the possibility of such damages arising. For purposes of this Section 9, consequential damages include, but are not limited to: (1) Buyer's lost production, sales and/or profits; (2) Buyer's loss of use of the Services and/or any other equipment; (3) Buyer's cost of capital; or (4) any claims of customers of the Buyer against Buyer or DNS.
10. **Limitation on Amount.** Notwithstanding any other provision of this Contract, the total liability, in the aggregate, of DNS and DNS' employees, officers, directors, representatives, affiliates and agents to Buyer or any third party claiming through or under Buyer for any claims, losses, damages, or costs arising out of or relating to this Contract, or the breach thereof, shall not exceed the total consideration received by DNS from Buyer under this Contract. This Section 10 shall apply regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort, strict liability, statutory liability, indemnity or otherwise.
11. **Termination for Default.** DNS may terminate this Contract if Buyer: (1) becomes insolvent; (2) is unable to meet its obligations as they become due or admits such in writing; (3) enters bankruptcy or has a receiver or trustee appointed for it; (4) fails to timely make payments under this Contract or under any other obligation of Buyer to DNS; or (5) fails to provide DNS with adequate assurance of due performance within fifteen (15) days of Buyer's receipt of DNS' written demand therefor. In the case of such a termination, Buyer shall be considered to have defaulted under this Contract and DNS shall have such remedies as are available to it under this Contract and/or at law.
12. **Miscellaneous.**
 - 12.1. **Severability.** If any provision of this Engagement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
 - 12.2. **Force Majeure.** DNS shall not be liable for any delay or failure to perform its obligations due to any cause beyond its reasonable control, including, without limitation, fire, accident, acts of public enemy, rebellion, insurrection, sabotage, transportation delays, material shortage, parts, labor, energy, machinery, act of God, government or judiciary.
 - 12.3. **Representation.** This Contract does not constitute DNS an agent, partner, or legal representative of Buyer for any purpose whatsoever. It is understood between the parties hereto that DNS is to act as an independent contractor and is not authorized to make any contract, agreement, warranty or representation on behalf of the Buyer.
 - 12.4. **Recovery of Expenses.** DNS shall be entitled to recover from Buyer all costs and expenses (including, but not limited to, reasonable attorney's fees) which are incurred by DNS in enforcing its rights under this Contract, including, but not limited to, the recovery of any amounts owed by Buyer to DNS under this Contract.
 - 12.5. **Hiring Prerogative.** Each party acknowledges that the other party's employees are critical to the servicing of its customers. Therefore, Buyer agrees not to solicit, employ or otherwise engage DNS employees without DNS's prior written consent for a period of thirty-six (36) months following that employee's last date of employment by DNS and DNS agrees not to solicit, employ or otherwise engage Buyer's employees involved in the services contemplated by this Agreement without Buyer's prior written consent for a period of thirty-six (36) months following that employee's last date of employment by Buyer. Should either party violate this provision, the violating party agrees to pay the other party the greater of one-half of the former employee's annual salary or one hundred fifty thousand dollars (\$150,000). The parties further agree that in the event of any actual or threatened breach of any of the provisions of this Section 12.5, the non-breaching party shall be entitled (in addition to any and all other rights and remedies at law or in equity for damages or otherwise, which rights and remedies are and shall be cumulative) to specific performance, a temporary restraining order, or an injunction to prevent such breach or contemplated breach. Further, such payment and additional relief does not restrict the non-breaching party's rights or remedies as they relate to such former employee.
 - 12.6. **Dispute Resolution.** Any dispute, controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall take place in Erie, Pennsylvania, US. The decision of the arbitration panel shall be binding upon the parties and judgment on the award may be entered in any court of competent jurisdiction.
 - 12.7. **Limitation of Actions by Buyer.** Any actions against DNS with respect to any matter arising out of or relating to this Contract must be brought by Buyer, or anyone claiming through or under Buyer, within the earlier of: (1.) one (1) year from the date that the claim in question accrued; or (2.) the expiration of any applicable statute of limitations.
 - 12.8. **Governing Law.** This Contract shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to any applicable principles of conflicts of law which would direct the application of the laws of another jurisdiction.
 - 12.9. **Waiver.** The waiver of any right or default in any one instance shall not be deemed a waiver of any future right to enforce this Contract.
 - 12.10. **Assignment.** This Contract may not be assigned by Buyer without the written consent of DNS.
 - 12.11. **Severability.** If any provision of this Contract is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect.
13. **Questions and Comments.** Buyer shall send all correspondence or notices to Distributed Network Software, LLC at 3250 West Lake Road Erie, PA 16505.